

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing Nos. R-05/17-222
) & R-07/17-324
Appeal of)
)

INTRODUCTION

The petitioner filed a fair hearing request on May 12, 2017 regarding a decision by the Department for Children and Families, Economic Services Division denying her application for General Assistance (GA) for emergency temporary housing. At the initial hearing held in that matter, on July 6, 2017, the petitioner verbally filed another hearing request. A hearing on that request was held on September 7, 2017.

The issues are whether the petitioner's first appeal is moot and whether the Board has jurisdiction to address the issues raised by the petitioner in her second appeal. The following discussion is based on the written record and on the representations of the parties at the hearings.

DISCUSSION

On May 12, 2017 (a Friday) the Human Services Board received notice from the Department's Rutland district office that the petitioner had requested an "expedited hearing" to

appeal a denial earlier that day by the Department of her application for GA for temporary housing. The Department provided documents that it had denied the petitioner's application because she had already received the yearly maximum of 28 days of emergency assistance that is available to "vulnerable" individuals. The Board docketed that appeal as Fair Hearing No. R-05/17-222.

Later that same day, the Board informed the petitioner by phone that a telephone hearing would be held on an expedited basis at 3:30 p.m. on May 15, 2017 (the following Monday), and that the petitioner would be called at that time at the phone number she had provided to the Department and the Board.

At the appointed time on May 15, 2017, the hearing officer was unable to reach the petitioner or leave a voice message for her at the phone number she had provided. At about 4:00 p.m. that day, the hearing officer received a call from the petitioner (apparently after she had received a text identification of the hearing officer's phone number). The petitioner demanded the name of the person (presumably the Board's clerk) with whom she had spoken on May 12, when she had been orally informed about the hearing on May 15. The hearing officer was unable to engage the petitioner in a

discussion of the issue the Department had identified in her case, and he was also unable to ascertain whether the petitioner wanted the hearing to be continued or rescheduled.

On May 16, 2017, the petitioner called the Board and demanded an in-person hearing in Rutland. Inasmuch as there were no other pending hearings scheduled for Rutland (which is more than a one-hour drive each way for the hearing officer, and close to two hours for the AAG), the hearing officer instructed the Board's clerk to reset the matter as a telephone hearing on June 8, 2017, which was the next day that other telephone hearings were scheduled to be held in Rutland. A written notice of that hearing was mailed to the petitioner on May 17, 2017.

On June 8, 2017, the hearing officer was again unable to reach or leave a voice message for the petitioner at the appointed time and phone number for the hearing. However, a few minutes later the petitioner called back (apparently after she had again received a text notification of the hearing officer's call) and demanded an in-person hearing. The hearing officer advised the petitioner that he could hear the petitioner's case *by phone*, either immediately or in the near future, or that he could schedule an in-person hearing for the petitioner on July 6, 2017, which was the next day

that time and space had been reserved for fair hearings in the Rutland district office. The petitioner opted for the latter. On June 9, 2017, the Board notified the petitioner in writing of that hearing.

An in-person hearing was held as scheduled on July 6, 2017. The Department represented that it had denied the petitioner's application for GA in May because its records showed that as of April 7, 2017, it had issued the maximum-per-year 28 nights of GA vouchers to motels where the petitioner had been housed over the past year. The petitioner alleged that she had checked out of the motel where she had last stayed on April 3, 2017, which would mean that there were four more nights of GA assistance potentially available to her. The Department agreed to attempt to verify this information through the motel (which had not refunded any payments to the Department for the four nights at issue).

However, before the hearing concluded, the petitioner indicated that she had "other issues" she wanted to appeal. Inasmuch as the time allotted for her hearing had already expired (with other cases awaiting), and given that the petitioner had not previously informed either the Department of the Board of any other grounds for an appeal, the petitioner agreed with the hearing officer's offer to docket

her request as a separate hearing and to schedule another day in the future to hear it (in person).

On July 10, 2017 the Board sent a written notice to the petitioner that a hearing on the new appeal (which had been docketed as Fair Hearing No. R-07/17-324) was scheduled to be heard on August 3, 2017.

On July 21, 2017, the petitioner contacted the Board to request a continuance of her hearing scheduled on August 3rd. That same day, the Board notified the parties (the petitioner by phone, the Department by email) that the scheduled hearing would be continued.

On July 21, 2017, the Department notified the Board that shortly after the hearing that had been held on July 7, it had granted the petitioner GA for four additional nights of temporary housing, effective July 7, 2017.

On August 26, 2017 the Board sent a notice to the parties that Fair Hearing No. R-07/17-324 had been rescheduled to September 7, 2017.

On August 29, 2017, the Board sent the petitioner a notice in Fair Hearing No. R-05/17-222 directing the petitioner to inform the Board if she did not consider that case "settled".

On September 7, 2017, the hearing in Fair Hearing No. R-07/17-324 was held as scheduled. At that time, the petitioner did not dispute that she had received four additional nights of GA housing in July, and that as a result she had used up her maximum of 28 nights within the last year. She could not identify any other issue in dispute regarding Fair Hearing No. R-05/17-222.¹

As for Fair Hearing No. R-07/17-324, the petitioner gave a rambling account of her determination to expose and "hold accountable" those individuals (motel employees and Department workers) whose "lies" she thinks led to her initial (but since-reversed) denial of GA. However, despite repeated requests by the hearing officer, the petitioner could not articulate any continuing harm to herself or specific relief she wanted the Board to grant regarding any past or ongoing eligibility determination she has received from the Department regarding any benefits she has applied for or receives.²

¹The petitioner has never alleged, nor does there appear any indication in the record, that she is eligible for GA for temporary housing on any *other* basis (e.g., having been subject to either a "court ordered or constructive eviction" as set forth in Rule Nos. 2652.2 and 2621).

²On September 18, 2017 the Board mailed the petitioner CD copies of the recordings of the hearings held on July 6 and September 7, 2017, as she had requested.

ORDER

The petitioner's appeal in Fair Hearing No. R-05/17-222 is dismissed as moot. Her appeal in Fair Hearing No. R-07/17-324 is dismissed as being beyond the Board's jurisdiction to consider.

REASONS

The Board has repeatedly held that a case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." See, e.g., Fair Hearing Nos. R-12/16-1046, B-09/09-502, and 17,272 (quoting In Re S.H., 141 Vt. 278, 280 [1982]). As noted above, in Fair Hearing No. R-05/17-222 the Department reversed its initial decision and granted the petitioner the four additional nights of housing she (correctly) maintained were coming to her under the within the 28-nights-per-year maximum in the regulations (Rule 2652.3). The petitioner has not articulated any *further* factual or legal dispute regarding her eligibility for GA. Thus, her appeal in that case must now be considered moot.

3 V.S.A. § 3091(a) confers the opportunity for a fair hearing to an individual "because his or her claim for assistance, benefits, or services is denied . . . or because

the individual is aggrieved by any agency action affecting his or her receipt of assistance. . .” The petitioner’s stated grievance in Fair Hearing No. R-07/17-324 appears to concern her desire to confront the motel employees who in early April allegedly informed the Department of her behavior at the motel and the Department’s GA workers who had contact with those employees. The petitioner did not allege or insinuate that there are any benefits or assistance she seeks from the Department *at this time* that are in any way related to whatever those employees may have told the Department. The petitioner could not articulate, and the hearing officer could not glean, what relief the Board might grant in the form of holding those employees “accountable” for their alleged actions against her. Thus, it cannot be concluded that the petitioner has identified a grievance that the Board has any statutory authority to consider. Accordingly, her appeal in Fair Hearing No. R-07/17-324 must be dismissed.

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